

August 19, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW TW-A325
Washington, DC 20554

Re: *Notice of Oral Ex Parte Presentation*
WT Docket No. 01-309 -- Section 68.4(a) of the Commission's Rules
Governing Hearing Aid-Compatible Telephones

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b), the Commission is hereby notified that on August 18, 2004, the following individuals met with representatives of the Wireless Telecommunications Bureau ("Bureau") to discuss issues raised in petitions for reconsideration of the Commission's *Report and Order* in the above-referenced proceeding: Carolyn Brandon, Vice President, Policy, CTIA – The Wireless Association™ ("CTIA"); Michael Samsock, Verizon Wireless; and the undersigned. Bureau representatives in attendance were: Catherine Seidel, Deputy Bureau Chief; Nicole McGinnis, Legal Advisor, Office of the Bureau Chief; Greg Guice, Acting Associate Division Chief, Public Safety and Critical Infrastructure Division; and Andra Cunningham, Attorney, Public Safety and Critical Infrastructure Division. The information set forth in the attachment was provided to meeting participants.

CTIA and Verizon Wireless argued that the Commission should: (1) reconsider its decision in the *Report and Order* to apply existing Part 68 wireline complaint procedures wholesale to wireless HAC enforcement; (2) clarify that the Commission has exclusive authority to adjudicate HAC complaints pertaining to wireless carriers' and manufacturers' compliance with the HAC Act and Section 20.19 of the rules; and (3) confirm that consumers and industry alike are best served by exclusive Commission enforcement.

As discussed in the meeting, consumers and the public interest are best served by a uniform, centralized forum for resolving complaints and other wireless HAC enforcement issues. The Commission is best equipped and staffed to adjudicate wireless HAC complaints, as the Commission has the technical expertise and experience with industry standards that state

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commissions do not. Moreover, the Commission already has the staffing and procedures in place to consider consumer complaints, and the Commission has considerable experience with carriers and consumers in the similar Section 255 context. Consumers will know at the outset to whom complaints should be submitted, and consumers and industry will benefit from the certainty and economies of scale made possible by nationwide uniform standards and rules. The parties also discussed the wireless industry's HAC-related outreach efforts.

Please contact the undersigned if there are questions concerning this filing.

Respectfully submitted,

/s/

Robert G. Morse

Attachment

cc: Catherine Seidel
Nicole McGinnis
Greg Guice
Andra Cunningham

**CTIA – THE WIRELESS ASSOCIATION™ AND VERIZON WIRELESS
PRESENTATION OF AUGUST 18, 2004
HEARING AID COMPATIBILITY
WT DOCKET NO. 01-309**

Procedural History

- In the *HAC Order* (§ 95), the Commission extended its Part 68 complaint rules, which are based on Section 710(h) of the Act, to wireless service providers and manufacturers. Under these rules, “informal complaints regarding compliance with the hearing aid compatibility rules ... must first be filed with the state public utility commission, so long as the state has adopted our hearing aid compatibility rules and provided for enforcement of those sections.”
- CTIA and Verizon Wireless timely sought reconsideration of this aspect of the *Order*.
- The Commission provided interested parties two opportunities to comment on petitions for reconsideration. No parties opposed this aspect of CTIA’s and Verizon Wireless’s petitions for reconsideration.

Introduction/Background

- The Commission’s plenary authority to regulate RF emission and technical matters is not superseded by Section 710(h).
- Delegating authority to state commissions to adjudicate individual customers’ complaints will result in inconsistent rulings and balkanized enforcement.
 - If one state commission in adjudicating a complaint finds that a particular handset model or carrier deployment effort is not compliant with the Commission’s rules, but another state commission (or the Commission, for that matter) reaches the opposite conclusion in a different complaint, manufacturers and carriers would be compelled to adopt state-specific marketing and distribution plans, and the Commission’s reliance on manufacturer certification would be undermined.
 - If handsets deemed noncompliant in one state are offered in adjoining states via a wide-area service plan, a carrier would be effectively precluded from offering the handset in both states, thus undermining consumer choices and creating significant logistical difficulties for carriers and manufacturers.
 - New Section 20.19(g) provides simply that “[e]nforcement of this section is hereby delegated to those states which adopt this section and provide for enforcement.” The Commission’s rules do not define or otherwise expressly limit the issues appropriate for state commission resolution. State commission involvement in such issues creates a compliance dilemma for manufacturers and service providers.
 - Service providers’ and manufacturers’ handset deployment obligations are *nationwide* in scope. An individual state commission should not have authority to

determine a carrier's or manufacturer's compliance with handset sales and deployment obligations.

- The Commission has ample authority, under Title III of the Communications Act and the HAC Act itself, to assert federal primacy in enforcement of wireless HAC requirements, and the public interest is best served by centralizing within the FCC the authority to hear and resolve complaints brought under Section 20.19 of the rules.

Commission Authority to Preempt State Regulation of Wireless HAC Standards

- Title III RF Interference/Technical Matters. Title III of the Act gives the Commission plenary authority to regulate RF emission and technical matters.
 - The Commission's wireless HAC regulations, together with industry-developed standards, seek to achieve compatibility between hearing aids and wireless handsets by imposing RF interference and other technical requirements on handsets.
 - The Commission's plenary authority to regulate RF emission and technical matters is well established by judicial and Commission precedent.
 - In the *HAC Order*, the Commission itself relied in part on Sections 301 and 303 of the Act to impose wireless HAC requirements on service providers and manufacturers – the very statutory provisions conferring exclusive jurisdiction over RF matters to the Commission.
- HAC Act Public Mobile Services Exemption. Section 710(b) authorizes the Commission to “revoke or otherwise limit” the public mobile services exemption.
 - The public mobile services exemption precluded Section 710(h) and the implementing regulations from applying to wireless services; the Commission's authority to “otherwise limit” the scope of the exemption necessarily entails the authority to keep aspects of that exemption in effect. Thus, the Commission is expressly authorized to maintain that exemption as to Section 710(h) and its implementing rules.
 - In order to lift the public mobile services exemption, the Commission must consider technical feasibility. As discussed above and in pending petitions for reconsideration, balkanized enforcement raises substantial questions of technical feasibility for carriers and manufacturers.
 - Lifting the public mobile services exemption in a manner that results in confusion for consumers, service providers and handset and hearing aid manufacturers, is contrary to the public interest.
- Section 255(f). Section 255(f) of the Act grants the Commission plenary authority to hear complaints under the disabilities access requirements of Section 255.
 - The Commission's Section 255 rules include hearing aid compatibility provisions, and the Part 68 HAC rules were amended to ensure that they better serve the Commission's Section 255 objectives, finding that “retaining these [HAC] rules in Part 68, ... ensure[s] that the Commission is able to continue monitoring and enforcing compliance with these requirements as directed by Congress in Section 255 of the Act.” 15 FCC Rcd 24944, ¶ 66 (2000).

- Section 710(h) Does Not Compel the Commission to Delegate Enforcement Authority In this Instance.
 - Tenets of statutory construction require that the language of Section 710(h) providing that “[t]he Commission shall delegate to each State commission the authority to enforce ... compliance with the specific regulations that the Commission issues” be viewed in the context of the broader statute.
 - As discussed above, the Commission must interpret Section 710(h) in a manner consistent with Title III, the HAC Act itself and Section 255(f).
 - As to the HAC Act, interpreting Section 710(h) to require the Commission to automatically delegate authority to the states would perversely hinder the Commission’s authority to lift the public mobile services because delegation of authority to states would add technical feasibility questions.

Requested Commission Action

- The Commission should:
 - Reconsider its decision in the *HAC Order* to apply existing Part 68 wireline complaint procedures wholesale to wireless HAC enforcement.
 - Clarify that the Commission has exclusive authority to adjudicate HAC complaints pertaining to wireless carriers’ and manufacturers’ compliance with the HAC Act and Section 20.19 of the rules.
 - Confirm that consumers and industry alike are best served by exclusive Commission enforcement.
 - Uniform technical standards help ensure that consumers benefit from economies of scale in manufacturing and distribution.
 - The Commission is best equipped and staffed to adjudicate wireless HAC complaints, as the Commission has the technical expertise and experience with industry standards that state commissions do not.
 - The Commission already has the staffing and procedures in place to consider consumer complaints, and the Commission has considerable experience with carriers and consumers in the similar Section 255 context.